



POLICE DEPARTMENT

March 3, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Claude Policart
Tax Registry No. 942370
72 Precinct
Disciplinary Case No. 86584/10 (2010-2164)

The above-named member of the Department appeared before me on October 29, 2010 and December 13, 2010, charged with the following:

1. Said Police Officer Claude Policart, while assigned to the 62nd Precinct, on or about September 6, 2009, did fail and neglect to maintain said officer's Activity Log (PD 112-145), as required.

P.G. 212-08, Page 1, Paragraphs 1 and 2 – ACTIVITY LOGS
COMMAND OPERATIONS

2. Said Police Officer Claude Policart, while assigned as indicated in Specification # 1, on or about September 6, 2009, did issue a "C" summons for Disorderly Conduct to [REDACTED] and did fail to turn the summons in at the end of his tour, as required.

P.G. 209-09 Page 3, Paragraphs 21 and 22 – SUMMONSES

3. Said Police Officer Claude Policart, while assigned as indicated in Specification # 1, on or about September 9, 2009, was wrongfully in possession of a bogus or counterfeit New York City Police Department shield (number 13035), without permission or authority to do so.

P.G. 203-10, Page 2, Paragraph 18 – PUBLIC CONTACT-PROHIBITED
CONDUCT GENERAL REGULATIONS

4. Said Police Officer Claude Policart, while assigned as indicated in Specification # 1, on or September 6, 2009, did abuse his authority as a member of the New York City Police Department, in that said Police Officer while holding his expandable baton in his left hand, removed his service firearm from the holster with his right hand without provocation on the part of Mr. [REDACTED]. (As amended)

P G 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT–PROHIBITED
CONDUCT GENERAL REGULATIONS

5

(As amended)

6

(As amended)

The Department was represented by Michelle Y Alleyne, Esq , Department Advocate's Office, and the Respondent was represented by Eric Sanders, Esq

The Respondent, through his counsel, entered pleas of Guilty to certain of the subject charges and pleas of Not Guilty to the remaining charges A stenographic transcript of the hearing record has been prepared and is available for the Police Commissioner's review

DECISION

The Respondent, having pleaded Guilty, is found Guilty of Specification Nos 1 through 4 The Department moved to Dismiss Specification Nos 5 and 6

SUMMARY OF EVIDENCE IN MITIGATION

The Respondent recalled that on September 6, 2009, he was on duty, assigned to the 62 Precinct, partnered with Police Officer Michael Alvarez when he observed [REDACTED] who was holding an open container of alcohol. The Respondent approached [REDACTED] who stomped his feet, clenched his fists, called the Respondent "a nigger," and "lunged at" the Respondent. As he held his expandable baton in his left hand, the Respondent removed his service firearm from his holster with his right hand and held it with the barrel pointed toward the ground.

The Respondent prepared a "C" summons for Disorderly Conduct and handed [REDACTED] the "Defendant's Copy." The Respondent acknowledged that he did not write [REDACTED]'s name in his Activity Log or enter in his Activity Log the fact that [REDACTED] had refused to sign the "C" summons for Disorderly Conduct that he was issued. The Respondent further acknowledged that when his tour ended at 0750 hours and he returned to the 62 Precinct, he did not place the Department copy of the "C" summons for Disorderly Conduct that he had issued to [REDACTED] into the summons box on the front desk as he was required to do at the end of his tour. He admitted that he decided to hold onto the Department's copy of the summons until his next tour of duty so that he could re-read what he had written on the summons. He asserted that on past occasions, Department copies of summonses that he had issued and placed into the summons box had "disappeared" from the box "if someone disagreed" with the summons that he had issued.

The Respondent further acknowledged that on September 9, 2009, he was wrongfully in possession of a bogus or counterfeit shield. The Respondent explained that

"a day or two before" September 6, 2009, one of the numerals on his Department-issued shield had "popped out," so he obtained a counterfeit shield containing his full shield number to carry on his person. The Respondent admitted that he had not sought or obtained permission or authority to do this.

FINDINGS AND ANALYSIS

Specification Nos. 1 through 4

The Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 1 through 4.

Specification Nos. 5 and 6

The Department moved to Dismiss Specification Nos. 5 and 6.

With regard to Specification No. 5, the Assistant Department Advocate (the Advocate) stated that this charge alleging that the Respondent had [REDACTED] [REDACTED] [REDACTED] should not have been brought against the Respondent because, as Respondent's counsel pointed out to the Advocate, under Patrol Guide Procedure 212-11, officers are only required to prepare a Stop & Frisk Report (Form UF-250) where the stop involves a felony or Penal Law misdemeanor and [REDACTED] is not a misdemeanor under the Penal Law.

With regard to Specification No. 6, the Advocate stated that the Department was moving to Dismiss this charge alleging that the Respondent had [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] the only witness to this incident who is known to the Department is Police Officer Alvarez, the Respondent's partner that day. As a result, the Department is not able to prove this charge.

It is recommended that the Department's motion to Dismiss Specification Nos. 5 and 6 be granted.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

Respondent was appointed to the Department on July 10, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has pleaded Guilty and admitted that he failed and neglected to maintain his Activity Log, that he failed to turn in at the end of his tour the summons for Disorderly Conduct that he had issued to [REDACTED] that he abused his authority in that while holding his expandable baton in his left hand he removed his service firearm from the holster with his right hand without provocation on the part of [REDACTED] and, finally, that he was wrongfully in possession of a bogus or counterfeit shield without permission or authority.

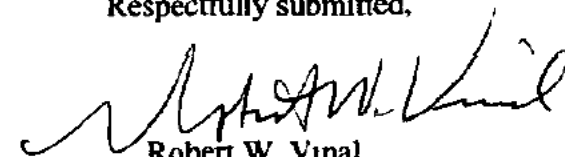
With regard to the most serious charge against the Respondent, that he removed his service firearm from his holster without provocation on the part of [REDACTED], although [REDACTED] was difficult and verbally abusive to the Respondent during this

encounter, the Respondent should not have removed his service firearm from his holster unless he intended to use deadly physical force and nothing [REDACTED] did during this encounter justified the potential use of deadly physical force


In her closing argument, the Advocate recommended that the Respondent forfeit 25 vacation days as a penalty

I recommend that the Respondent forfeit 20 vacation days, which is the penalty that the Department offered at a pre-trial conference in exchange for the Respondent's plea of guilty to all six of the Specifications he was then charged with (See Transcript of Conference held on August 12, 2010 page 2) As has been noted, two of these charges have since been dismissed as part of this proceeding

Respectfully submitted,


Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPROVED

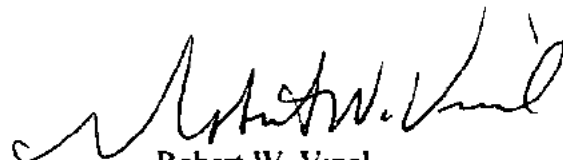

AUG 2 2011
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner - Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER CLAUDE POLICART
TAX REGISTRY NO 942370
DISCIPLINARY CASE NO 86584/10 (2010-2164)

The Respondent received an overall rating of 3.5 on his 2010 evaluation, 4.5 on his 2009 evaluation, and 3.5 on his 2008 evaluation. He has been awarded one Excellent Police Duty medal [REDACTED] He has no prior formal disciplinary record.

For your consideration



Robert W. Vinal
Assistant Deputy Commissioner - Trials